

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Mason Johnson,)	C/A No. 5:12-cv-01914-JMC-KDW
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
Kathryn Bumgardner and Officer Daniels,)	
)	
Defendants.)	
)	
)	
)	

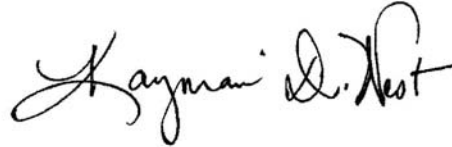
Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This matter is before the court on Plaintiff’s Motion for Judgment by Default filed on January 2, 2013. ECF No. 30. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Plaintiff’s motion asks the court to enter judgment against Defendants contending that Defendants did not timely respond to his Complaint because he did not receive a copy of their Answer until December 6, 2012, “two (2) days after the allotted time when he should receive such.” ECF No. 30. Defendants oppose this motion contending that their Answer was timely filed on December 3, 2012 and “timely served on pro se Plaintiff by U.S. Mail on the same day, December 3, 2012.” ECF No. 32.

Rule 55(a) of the Federal Rules of Civil Procedure provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ.

P. 55(a). The undersigned has reviewed the docket and finds that Defendants' Answer, which was due by December 4, 2012, was timely filed and timely served on Plaintiff on December 3, 2012. *See* ECF Nos. 22, 25. Accordingly, it is recommended that Plaintiff's Motion for Judgment by Default, ECF No. 30, be denied.

IT IS SO RECOMMENDED.

A handwritten signature in black ink, reading "Kaymani D. West". The signature is written in a cursive, flowing style.

January 24, 2013
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge